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Fast-Track Regulation Agency Background Document

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| Agency name | Department of Behavioral Health and Developmental Services |
| Virginia Administrative Code (VAC) citation(s) | NEW: 12 VAC35-260 (previously filed as 12 VAC35-270) |
| Regulation title(s) | Certified Recovery Residences |
| Action title | Establishes certification of recovery residences |
| Date this document prepared | August 16, 2019; August 27, 2019; September 30, 2019; Updated 2/20/20. |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulatory action creates a new chapter, 12 VAC35-260 (previously filed as 12 VAC35-270), in compliance with Chapter 220 of the 2019 Acts of Assembly (HB2045), which added a new section numbered 37.2-431.1 in the Code of Virginia creating an avenue for the certification of recovery residences through regulations adopted by the State Board of Behavioral Health and Developmental Services. The new regulations define “recovery residences” and, as allowed by the enabling legislation, create a voluntary certification for residences that meet standards of credentialing entities specified by DBHDS. The two credentialing entities specified in the regulation are nationally recommended organizations that follow best practice standards for recovery. The legislation was developed through a stakeholder workgroup over the last year and with broad community feedback that called for greater oversight for recovery housing in Virginia. The certification process will be the responsibility of the DBHDS Office of Recovery Services. There are no projected costs to this certification.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

“Certification list” means the list of certified recovery residences maintained by DBHDS.

“Certified recovery residence” means a recovery residence that has been certified by a credentialing entity and is on the certification list maintained by DBHDS.

“Credentialing entity” means a nonprofit organization that develops and administers professional certification programs according to nationally recognized recovery housing standards.

“DBHDS” means the Virginia Department of Behavioral Health and Developmental Services.

“Recovery residence” means a housing facility that provides alcohol-free and illicit-drug-free housing to individuals with substance use disorders and individuals with co-occurring mental illnesses and substance use disorders that does not include clinical treatment services.

“State board” means the State Board of Behavioral Health and Developmental Services.

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The new regulation, Certified Recovery Residences (12 VAC35-260), was approved at the July 17, 2019, meeting of the State Board as a fast track action.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

Chapter 220 of the 2019 Acts of Assembly (HB2045) added a new section numbered 37.2-431.1 in the Code of Virginia creating an avenue for the certification of recovery residences through regulations adopted by the State Board of Behavioral Health and Developmental Services. Section 37.2-203 of the Code of Virginia authorizes the Board to adopt regulations that may be necessary to carry out the provisions of Title 37.2 and other laws of the Commonwealth administered by the Commissioner and the Department.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health,

safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

As reported in a May 2019 The National Council for Behavioral Health brief, Recovery Housing Issue Brief: Information for State Policymakers:

“Recovery housing” refers to safe, healthy, and substance-free living environments that support individuals in recovery from addiction. While recovery residences vary widely in structure, all are centered on peer support and a connection to services that promote long-term recovery. Recovery housing benefits individuals in recovery by reinforcing a substance-free lifestyle and providing direct connections to other peers in recovery and recovery services and supports.

Many residents live in recovery housing during and/or after outpatient addiction treatment. Length of stay is self-determined and can last for several months to years. Residents often share resources, give experiential advice about how to access health care and social services, find employment, budget and manage finances, handle legal problems, and build life skills. Many recovery homes are organized under the leadership of [a] house manager and require residents to participate in a recovery program, such as 12-step and other mutual aid groups.” (https://www.thenationalcouncil.org/wp-content/uploads/2017/05/Recovery-Housing-Issue-Brief_May-2017.pdf, as excerpted from the U.S. Department of Health and Human Services (HHS), Office of the Surgeon General (2016). Facing Addiction in America: The Surgeon General’s Report on Alcohol, Drugs, and Health. p.5-11. Washington, D.C.: HHS, Retrieved from: <https://addiction.surgeongeneral.gov/sites/default/files/surgeon-generals-report.pdf>)

While many recovery residences are well-run, a national effort has been growing to bring standards to how recovery residences are operated due to “unscrupulous actors running sober living homes who profit off the misery of their occupants.” (Governing Magazine, May 14, 2018. Sober Living Homes and the Regulation They Need. Stratman and Aronberg. Retrieved from: <https://www.governing.com/gov-institute/voices/col-regulation-sober-living-homes-recovery-residences-need.html>).

A stakeholder workgroup was convened over the last year in Virginia to receive input from subject matter experts across the state. The legislation was developed through the workgroup with broad community feedback that called for greater accountability for recovery housing to ensure the health, safety, and welfare of individuals staying in recovery residences. A compromise was developed with stakeholders to provide departmental oversight to recovery housing without being overly burdensome to these ‘organic’ community-based organizations. Certified recovery residences will be held to nationally recognized standards to ensure safety and recovery through effective peer support, mutual accountability, and clear social structures. Voluntary certification of recovery housing is intended to make it easier to locate recovery housing for individuals needing such housing and thus create a list of available houses to be utilized by courts, community services boards, individuals, and families.

Section 37.2-431.1 of the Code of Virginia requires the promulgation of regulations adopted by the State Board to specify credentialing entities and the application process through DBHDS.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

These amendments are noncontroversial as the certification is voluntary. A stakeholder workgroup was convened over the last year in Virginia to receive input from subject matter experts across the state regarding recovery residences. The legislation mandating the voluntary certification was developed through the workgroup with broad community feedback that called for greater accountability for recovery

housing to ensure the health, safety, and welfare of individuals staying in recovery residences. A compromise was developed with stakeholders to provide departmental oversight to recovery housing without being overly burdensome to these 'organic' community-based organizations. The draft regulation is written in a manner to very closely track the legislative language; the draft regulation was posted for [public comment](#) from April 9, 2019 to May 9, 2019. Six comments were received (attached).

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

The new regulation establishes a process for the maintenance of a list by DBHDS of certified recovery houses. As allowed in the legislation, DBHDS identifies through the regulation specific credentialing entities and requires the submission of an application with proof of good standing from one of the specific credentialing entities in order to have a recovery residence added to the list on the DBHDS website.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

There are no identified disadvantages to the public or the Commonwealth in making this change. This regulation will allow for individuals and families to find recovery housing easier and faster. It also allows them to find housing that is safe, within their affordability, and has clarity about which populations are served.

Certified recovery residences will be held to nationally recognized standards to ensure safety and recovery through effective peer support, mutual accountability, and clear social structures. Voluntary certification of recovery housing is intended to make it easier to locate recovery housing for individuals needing such housing and thus create a list of available houses to be utilized by courts, community services boards, individuals, and families.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are not federal requirements for recovery residences, and therefore the requirements cannot be more restrictive. There are national standards and the two credentialing entities named in the regulation are recognized by the U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA).

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality is particularly affected by this action.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no other alternative regulatory methods consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of Chapter 220 of the 2019 Acts of Assembly (HB2045) through this new, simple regulation to help ensure the level of professional standards across the Commonwealth. Because the certification is voluntary, there is no impact on small business and many (though not all) recovery residences are non-profit entities. The only performance standard are found in the requirements in Section 20; namely, to meet the qualifications, policies, and practices established by one of the specific credentialing entities, and be certified, accredited or hold a charter from one of the two credentialing entities named in the regulation. There are no exemptions as the certification is voluntary.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

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| <p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p> | <p>There is no additional cost to implement and enforce the amendment.</p> |
| <p>Projected cost of the new regulations or changes to existing regulations on localities.</p> | <p>There is no additional cost on localities as a result of these changes.</p> |
| <p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p> | <p>Individuals receiving or needing services and their families; law enforcement officials; parole or probation officers; courts; community services boards; recovery housing owners and operators; and, recovery organizations.</p> |

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| <p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <p>a) is independently owned and operated and;</p> <p>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p> | <p>The number of recovery residences in the Commonwealth is currently unknown as there are no requirements or oversight to own and operate one. In Maryland, 200 recovery homes became certified with the department within the first five years of implementation.</p> <p>It is not possible to estimate the number of individuals that will be affected by this regulation.</p> |
| <p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including:</p> <p>a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and</p> <p>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p> | <p>There is no additional administrative cost for individuals, businesses, or other entities, except that for recovery homes that wish to be credentialed through the Virginia Association of Recovery Residences (VARR, one of the two credentialing entities) currently there is a VARR annual membership fee of \$500.00 a year, and a \$50.00 payment for every additional house. The VARR inspection fee is included with yearly membership. If the housing is located outside of a 50 mile radius from Richmond, an additional travel fee for the inspector will be required and dependent on the location of the inspection. The credentialing and certification is voluntary.</p> |
| <p>Beneficial impact the regulation is designed to produce.</p> | <p>Certified recovery residences will be held to nationally recognized standards to ensure safety and recovery, and the list will be a convenience to individuals seeking a home as well as community stakeholders who may assist them (family members, law enforcement, parole or probation officers, the community services boards, and the courts).</p> |

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

There is no other alternative to the regulatory action to establish a voluntary certification list for Virginia.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

This action is to establish a new regulation as mandated by the Virginia General Assembly and therefore is not the result of a periodic or small business impact review.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This amendment will have a positive impact on families because they will have greater access to find recovery housing for their family members in recovery, and to find recovery housing that has been deemed to meet national standards.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

This proposed regulation is a new chapter 260 creating a new voluntary certification list under the Office of Recovery Services. The definitions are intended to give statewide name recognition to successful recovery housing models and provide insight to the regulations regarding the purpose of the program.

The regulation first establishes the voluntary certification program such that should a recovery residence choose to be certified by the department and maintained on the agency web list, it must adhere to nationally recognized standards as demonstrated by membership or charter with one of the two credentialing entities that currently certify houses that meet these standards: the Virginia Association of Recovery Residences and Oxford House.

Any entity wishing to be certified must submit a completed application provided by DBHDS with proof of membership or charter with a credentialing entity.

The regulations impose a penalty for any recovery residence that falsely advertises as a “certified recovery residence” and is not on the DBHDS certification list. DBHDS is given authority to institute civil proceedings should any person violate the provisions of this chapter.

State Board of Behavioral Health and Developmental Services
Division of Compliance, Legislative, and Regulatory Affairs
COMMENTS ON: DRAFT NEW CHAPTER 260, CERTIFIED RECOVERY RESIDENCES

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| Stage | DRAFT Regulation for Public Comment |
| VAC | DRAFT New Chapter 12VAC35-260 |
| Window: | April 9, 2019- May 9, 2019 |

| # | Commenter Name | Commenter Organization | Date | Time | Comment Title | Comments | DBHDS Response |
|---|-----------------|------------------------|----------|---------|----------------------|--|---|
| 1 | Kathy Harkey | SAARA of Virginia | 4/9/2019 | 3:17 PM | Recovery Residence | <p>Any person, nonprofit organization, or business entity seeking to operate a certified recovery residence under this chapter shall for each location (i) meet the qualifications, policies, and practices established by a professional certification program according to nationally recognized recovery housing standards.</p> <p>Please provide a copy of the "qualifications, policies, and practices Virginia will use for certification consideration.</p> | <p>Thank you for your comments. The qualifications, policies, and practices will be determined by the two credentialing entities, Oxford House and the Virginia Association of Recovery Residences (VARR).</p> <p>(Note: A copy of their certification standards was sent to the commenter.)</p> |
| 2 | John Shinholser | McShin Foundation | 4/9/2019 | 3:30 PM | "Recovery Residence" | <p>Could you better define clinical services that cannot be provided in these homes, would this eliminate any recovery home that has a licensed social worker or drug counselor in the home. What about Medicaid funded homes? Some outpatient programs have recovery residences.</p> <p>Also what is the criteria for application, what are the application questions to be certified, who decides the questions?</p> | <p>Thank you for your comments. Homes that provide clinical services will continue to be licensed by DBHDS, while the voluntary certification process administered by DBHDS as required through Chapter 220 of the 2019 Acts of Assembly (HB2045) will be used to identify homes that do not provide clinical services.</p> <p>The application will be modeled after Maryland's</p> |

| # | Commenter Name | Commenter Organization | Date | Time | Comment Title | Comments | DBHDS Response |
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| | | | | | | You should add CAPRSS to list of accrediting body at least those members are already nationally accredited. | recovery residence program and the draft application will be reviewed by the DBHDS Recovery Residences Workgroup. DBHDS identified recovery housing accrediting bodies that are recognized by the U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA). |
| 3 | William Hart | Unknown | 4/10/2019 | 12:37 PM | Recovery Residences | Thank you DBHDS! It his high time for the State to get a handle of the growing problem of Recovery Residences who do not actually have the peers best interest in mind and who are not certified or recognized by any accrediting agency. People who are actively trying to recover are being used like pawns in some instances and it is imperative that Virginia not become like Florida. Having standards will assure that all Recovery Residences in Virginia are operating with the same goal in mind: recovery! Both VARR and Oxford House are good choices. | Thank you for your comments. |
| 4 | Gayle Parrish | Henrico Probation and Parole | 4/15/2019 | 8:20 AM | Recovery Homes | I believe it is important to have wording that clarifies the recovery home is in fact a sober living environment and not a | Thank you for your comments. |

| # | Commenter Name | Commenter Organization | Date | Time | Comment Title | Comments | DBHDS Response |
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| | | | | | | substance abuse treatment program. Too often, it is presented to individuals, attorneys, and the courts that a person is entering a treatment program, when in fact it is a recovery residence, not an inpatient treatment facility. I'm hopeful this legislation might limit the number of recovery residences that are opening up on what seems like a monthly basis. | |
| 5 | Frank Bellanger | Unknown | 4/17/2019 | 4:32 AM | Recovery Houses | Recovery houses offer an essential service to people in recovery from Substance Use Disorder. Lives are literally at stake. This law appears to be written to stigmatize people suffering from Substance Use Disorder. Why were these two accrediting organizations chosen? What is the criteria for certification (what questions are on the application, who will review it, who makes the final decision, is there an appeal process)? This appears to open the door to restrict a vitally necessary resource for those in recovery instead of ensuring that there are as many resources necessary to battle this disease. | DBHDS identified recovery housing accrediting bodies that are recognized by SAMHSA. The application will be modeled after Maryland's recovery residence program and the draft application will be reviewed by the DBHDS Recovery Residences Workgroup. |
| 6 | Debbie Rosenbaum | Unknown | 4/17/2019 | 8:08 PM | Recovery residences | I would welcome some oversight-it's important for authenticity to avoid the bureaucratizing at all cost. Reimbursement of the providers doing the right thing | Thank you for your comments. |

| # | Commenter Name | Commenter Organization | Date | Time | Comment Title | Comments | DBHDS Response |
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| | | | | | | over the shady ones. We cannot let what's happened in other states happen in Virginia. | |